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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re :  
AMES DEPARTMENT STORES, INC., *et al.* : Chapter 11  
: Case No. 01-42217 (REG)  
: (Jointly Administered)  
Debtors. :  
-----X  
AMES MERCHANDISING CORPORATION, :  
: Plaintiff, :  
: vs. : Adv. Pro. No. 04-01104  
: GMAC COMMERCIAL CREDIT LLC, etc., :  
: Defendant. :  
-----X  
GMAC COMMERCIAL FINANCE, LLC :  
: Third Party Plaintiff, :  
: vs. :  
: M. KAMENSTEIN, INC., :  
: Third Party Defendant. :  
-----X

**THIRD PARTY COMPLAINT**

GMAC Commercial Finance, LLC (hereinafter “GMAC CF”), Third Party Plaintiff, by and through its undersigned counsel, brings this Third Party Complaint

against M. Kamenstein, Inc. (hereafter “Third Party Defendant”), on the following cause of action:

**JURISDICTION AND VENUE**

1. Jurisdiction is founded upon 28 U.S.C. § 157 and 28 U.S.C. § 1334.
2. This Court has supplemental jurisdiction over the claims stated herein pursuant to 28 U.S.C. § 1367.
3. By virtue of the nature of the allegations contained in the Third Party Complaint, this is a core proceeding.
4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**FACTUAL ALLEGATIONS**

5. GMAC CF is a limited liability corporation with its principal place of business in Southfield, Michigan.
6. GMAC CF, in addition to other ventures, provides factoring services to manufacturers and suppliers active in the textile and retail clothing business.
7. M. Kamenstein, Inc. is a Delaware corporation, licensed to do business in the state of New York, that was in the business of selling textiles and/or clothing to Ames Merchandising Corporation. (hereinafter “Ames”).
8. Pursuant to a written agreement between GMAC CF and the Third Party Defendant (the “Factoring Agreement”), GMAC CF was responsible for collecting amounts due and owing from Ames as a result of goods sold and delivered to Ames which created accounts receivable which were factored with GMAC CF.
9. On August 20, 2001, Ames filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code (the “Petition Date”) in this Court.

8. On January 22, 2004, the Ames Merchandising Corp. as debtor in possession filed a “Complaint to Avoid Preferential Transfers” (the “Preference Complaint”) initiating an adversary proceeding (the “Preference Action”) against GMAC CF.

9. The sum and substance of the Preference Action is that GMAC CF has been sued to collect payments received by GMAC CF for accounts factored by the Third Party Defendant with GMAC CF.

10. A final resolution has yet to be reached in the Preference Action.

**COUNT I**  
**(Indemnity as Against M. Kamenstein, Inc.)**

11. All of the allegations contained in paragraphs 1 through 10 of this Complaint are incorporated by reference in this Count I.

12. The Factoring Agreement created a valid and binding contract by and between GMAC CF and the Third Party Defendant.

13. The Factoring Agreement and general equitable principles provide that GMAC CF shall have recourse against the Third Party Defendant if Ames should fail to pay for reasons other than financial inability.

14. By suffering or permitting Ames to pay the obligations due and owing on the accounts receivable to factored by GMAC CF, the Third Party Defendant placed itself in a surety position owing direct indemnity to GMAC CF for any failure of Ames, other than financial inability, to satisfy the payment obligations.

15. By virtue of the Factoring Agreement and general equitable principles, the Third Party Defendant is obligated to indemnify GMAC CF in the event of any recovery

obtained by Ames in the within adversary proceeding or otherwise, plus all costs of defense incurred by GMAC CF in opposing the Preference Action and in pursuing this action.

WHEREFORE, GMAC Commercial Finance LLC prays this Court to enter judgment against M. Kamenstein, Inc. for:

- (a) any and all amounts that may be found to be due from GMAC CF to Ames in the Preference Action;
- (b) all attorney's fees and costs incurred by GMAC CF in defending the Preference Action as well as in bringing this third party action; and
- (c) such other and further damages as this Court deems appropriate.

Dated: February 20, 2007.

ADORNO & YOSS, L.L.P.  
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Plaintiff, GMAC Commercial Finance LLC

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